

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

EMORY MCPHERSON,

Plaintiff,

v.

RANDY GROUNDS, et al.,

Defendants.

Case No. [15-cv-03145-EMC](#)

**ORDER OF SERVICE**

**I. INTRODUCTION**

Emory McPherson, an inmate at Salinas Valley State Prison, filed this *pro se* civil rights action under 42 U.S.C. § 1983. After he filed his complaint, he filed a first amended complaint, which the Court now reviews pursuant to 28 U.S.C. § 1915A.

**II. BACKGROUND**

In his first amended complaint (Docket No. 8), Mr. McPherson alleges that he slipped and fell down the stairs while he was handcuffed behind his back and returning from the shower on May 12, 2014. His first amended complaint alleges the following:

Due to the known risk of falls, “it is the ‘safe custody’ policy of the California Department of Corrections and Rehabilitation (CDCR) that anytime an inmate is handcuffed behind his back and made to walk, the inmate shall be escorted and assisted by prison staff to prevent injury.” *Id.* at 5. During 2013 and 2014, Salinas Valley prison staff operated “a ‘quick shower’ policy and practice that was contrary to” the “safe custody” practice and had the inmates walking up and down the wet and slippery stairs to and from the shower unescorted and unassisted. *Id.* Some inmates slipped and fell. Warden Grounds, captain Parin and subordinate prison staff developed and implemented the “quick shower” policy requiring inmates to be handcuffed behind their backs

1 and go up and down stairs for the second tier shower unescorted and unassisted by prison staff,  
2 notwithstanding known safety risks. *Id.* at 12.

3 On May 12, 2014, Mr. McPherson, who was housed on the bottom tier, was called for his  
4 turn to take a shower and directed to take the shower on the second floor. His hands were placed  
5 in handcuffs behind his back. He unsuccessfully objected to the order to shower on the second  
6 floor, explaining that he had previously “slipped and partially fell during a prior second tier  
7 shower” and was concerned about the danger of walking on the slippery stairs. *Id.* at 7. He was  
8 ordered by escorting officers C/O Alamo and C/O Ray to go up to the second tier shower or be  
9 disciplined for disrupting and delaying their shower procedures. Defendants C/O Ray, C/O Alamo  
10 and C/O Gonzales refused Mr. McPherson’s requests to shower on the bottom tier or to be  
11 handcuffed in front of his body. During the escort, C/O Alamo and C/O Ray argued, and C/O  
12 Alamo walked away. *Id.* at 8. After Mr. McPherson showered and was again handcuffed behind  
13 his back by C/O Ray, C/O Ray ordered him to return to his cell but refused to escort him down the  
14 stairs, despite Mr. McPherson’s expressed concerns for his safety. C/O Gonzales also ordered  
15 Mr. McPherson to return to his cell downstairs. As Mr. McPherson stepped onto the first step of  
16 the stairs, he fell down the stairs and landed on the cement floor of the building unconscious,  
17 where he allegedly lay for about 25-40 minutes before he was put on a backboard and taken to the  
18 hospital. *Id.* at 9.<sup>1</sup> He was seriously injured in the fall. *Id.* at 10. Mr. McPherson has suffered  
19 nine medical emergencies, continues to require “orthopedic therapy,” and takes narcotic pain  
20 medications since the fall. *Id.* at 10-11.

### 21 **III. DISCUSSION**

22 A federal court must engage in a preliminary screening of any case in which a prisoner  
23 seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28

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24  
25 <sup>1</sup> Mr. McPherson alleges that he fell “down a staircase of 15 steps” as he descended from the  
26 second to the first floor. Docket No. 8 at 2. He repeatedly refers to this as falling down “15  
27 flights of stairs” in his first amended complaint, *see, e.g., id.* at 3, 4, but this appears to be an  
28 incorrect use of the term “flight,” as it suggests he fell from the 15th floor to the 1st floor and  
made numerous turns on the staircase as it descended 15 floors. A “flight” of stairs is defined as a  
“series of stairs rising from one landing to another.” Webster’s II New Riverside University  
Dictionary 487 (1984). There is no need to further amend to correct this apparent error, but he  
should use the term “flight” correctly in future filings.

1 U.S.C. § 1915A(a). In its review the Court must identify any cognizable claims, and dismiss any  
2 claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or  
3 seek monetary relief from a defendant who is immune from such relief. *See id.* at § 1915A(b).  
4 *Pro se* pleadings must be liberally construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d  
5 696, 699 (9th Cir. 1990).

6 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a  
7 right secured by the Constitution or laws of the United States was violated and (2) that the  
8 violation was committed by a person acting under the color of state law. *See West v. Atkins*, 487  
9 U.S. 42, 48 (1988).

10 The Eighth Amendment's prohibition of cruel and unusual punishment requires that prison  
11 officials take reasonable measures for the safety and health of inmates. *See Farmer v. Brennan*,  
12 511 U.S. 825, 834 (1994). A prison official violates the Eighth Amendment only when two  
13 requirements are met: (1) the deprivation alleged is, objectively, sufficiently serious, and (2) the  
14 official is, subjectively, deliberately indifferent to the inmate's safety or health. *See id.* at 834.  
15 Liberally construed, the *pro se* first amended complaint states cognizable Eighth Amendment  
16 claims against warden Grounds, captain Parin, C/O Gonzales, C/O Alamo, and C/O Ray based on  
17 their alleged roles in implementing the "quick shower" policy that allegedly caused Mr.  
18 McPherson's fall down the stairs.

19 Under California law, "[t]he elements of a cause of action for negligence are well  
20 established. They are (a) a legal duty to use due care; (b) a breach of such legal duty; [and] (c) the  
21 breach as the proximate or legal cause of the resulting injury." *Ladd v. County of San Mateo*, 12  
22 Cal. 4th 913, 917 (Cal. 1996) (citations and internal quotation marks omitted). Liberally  
23 construed, the *pro se* first amended complaint states a state law negligence claim against warden  
24 Grounds, captain Parin, C/O Gonzales, C/O Alamo, and C/O Ray based on their alleged roles in  
25 implementing the "quick shower" policy that allegedly caused Mr. McPherson's fall down the  
26 stairs.

1 **IV. CONCLUSION**

2 1. The first amended complaint states Eighth Amendment and state law negligence claims  
3 against warden Grounds, captain Parin, C/O Gonzales, C/O Alamo, and C/O Ray based on their  
4 alleged roles in implementing the “quick shower” policy that allegedly caused Mr. McPherson’s  
5 fall down the stairs

6 2. The Clerk shall issue a summons and the United States Marshal shall serve, without  
7 prepayment of fees, the summons, a copy of the first amended complaint and a copy of all the  
8 documents in the case file upon the following defendants, who apparently work at Salinas Valley  
9 State Prison:

- 10 - warden Randy Ground  
11 - Facility B captain R. Parin  
12 - correctional officer D. Gonzales  
13 - correctional officer Alamo  
14 - correctional officer Ray

15 3. In order to expedite the resolution of this case, the following briefing schedule for  
16 dispositive motions is set:

17 a. No later than **January 29, 2016**, Defendants must file and serve a motion  
18 for summary judgment or other dispositive motion. If Defendants are of the opinion that this case  
19 cannot be resolved by summary judgment, Defendants must so inform the Court prior to the date  
20 the motion is due. If Defendants file a motion for summary judgment, Defendants must provide to  
21 Plaintiff a new *Rand* notice regarding summary judgment procedures at the time they file such a  
22 motion. *See Woods v. Carey*, 684 F.3d 934, 939 (9th Cir. 2012). If Defendants file a motion to  
23 dismiss for non-exhaustion of administrative remedies, Defendants must provide to Plaintiff a  
24 notice regarding motions to dismiss for non-exhaustion procedures at the time they file such a  
25 motion. *See Stratton v. Buck*, 697 F.3d 1004, 1008 (9th Cir. 2012).

26 b. Plaintiff's opposition to the summary judgment or other dispositive motion  
27 must be filed with the Court and served upon Defendants no later than **February 26, 2016**.  
28 Plaintiff must bear in mind the notice and warning regarding summary judgment provided later in  
this order as he prepares his opposition to any motion for summary judgment. Plaintiff also must  
bear in mind the notice and warning regarding motions to dismiss for non-exhaustion provided

1 later in this order as he prepares his opposition to any motion to dismiss. Plaintiff also is  
2 cautioned that he must comply with the Court's page limitations, i.e., his opposition brief may not  
3 exceed 25 pages in length.

4 c. If Defendants wish to file a reply brief, the reply brief must be filed and  
5 served no later than **March 11, 2016**.

6 4. Plaintiff is provided the following notices and warnings about the procedures for  
7 motions for summary judgment and motions to dismiss for non-exhaustion of administrative  
8 remedies:

9 The defendants may make a motion for summary judgment by  
10 which they seek to have your case dismissed. A motion for  
11 summary judgment under Rule 56 of the Federal Rules of Civil  
12 Procedure will, if granted, end your case. . . . Rule 56 tells you what  
13 you must do in order to oppose a motion for summary judgment.  
14 Generally, summary judgment must be granted when there is no  
15 genuine issue of material fact -- that is, if there is no real dispute  
16 about any fact that would affect the result of your case, the party  
17 who asked for summary judgment is entitled to judgment as a matter  
18 of law, which will end your case. When a party you are suing  
19 makes a motion for summary judgment that is properly supported by  
20 declarations (or other sworn testimony), you cannot simply rely on  
21 what your complaint says. Instead, you must set out specific facts in  
22 declarations, depositions, answers to interrogatories, or  
23 authenticated documents, as provided in Rule 56(e), that contradict  
24 the facts shown in the defendants' declarations and documents and  
25 show that there is a genuine issue of material fact for trial. If you do  
26 not submit your own evidence in opposition, summary judgment, if  
27 appropriate, may be entered against you. If summary judgment is  
28 granted, your case will be dismissed and there will be no trial. *Rand*  
*v. Rowland*, 154 F.3d 952, 962-63 (9th Cir. 1998).

20 The defendants may file a motion to dismiss for failure to exhaust administrative remedies  
21 instead of, or in addition to, a motion for summary judgment. A motion to dismiss for failure to  
22 exhaust administrative remedies is similar to a motion for summary judgment in that the court will  
23 consider materials beyond the pleadings. You have the right to present any evidence you may have  
24 which tends to show that you did exhaust your administrative remedies or were excused from  
25 doing so. The evidence may be in the form of declarations (that is, statements of fact signed under  
26 penalty of perjury) or authenticated documents (that is, documents accompanied by a declaration  
27 showing where they came from and why they are authentic), or discovery documents such as  
28 answers to interrogatories or depositions. In considering a motion to dismiss for failure to

1 exhaust, the court can decide disputed issues of fact with regard to this portion of the case. If  
2 defendants file a motion to dismiss and it is granted, your case will be dismissed and there will be  
3 no trial. *See generally Stratton v. Buck*, 697 F.3d at 1008.

4 5. All communications by Plaintiff with the Court must be served on a Defendant's  
5 counsel by mailing a true copy of the document to the Defendant's counsel. The Court may  
6 disregard any document which a party files but fails to send a copy of to his opponent. Until a  
7 Defendant's counsel has been designated, Plaintiff may mail a true copy of the document directly  
8 to the Defendant, but once a Defendant is represented by counsel, all documents must be mailed to  
9 counsel rather than directly to that Defendant.

10 6. Discovery may be taken in accordance with the Federal Rules of Civil Procedure.  
11 No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16 is required  
12 before the parties may conduct discovery.

13 7. Plaintiff is responsible for prosecuting this case. Plaintiff must promptly keep the  
14 Court informed of any change of address and must comply with the Court's orders in a timely  
15 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant  
16 to Federal Rule of Civil Procedure 41(b). Plaintiff must file a notice of change of address in every  
17 pending case every time he is moved to a new facility.

18 8. Plaintiff is cautioned that he must include the case name and case number for this  
19 case on any document he submits to the Court for consideration in this case.

20  
21 **IT IS SO ORDERED.**

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23 Dated: November 10, 2015

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26 EDWARD M. CHEN  
27 United States District Judge  
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